

H-2A Program Employer Information Booklet

Information for Employers About Applying for Non immigrant
Aliens to Perform Temporary or Seasonal Work in Agriculture
Under the H-2A Program

U.S. Department of Labor
Employment and Training Administration

CONTENTS OUTLINE

Section I: Introduction

Section II: The Application process

- Who May Apply
- Where to Apply
- What to Submit
- Conditions to be Satisfied
- When to Apply
- How to Apply
- Review of Applications
- Applications Accepted for Consideration
- Applications Not Accepted for Consideration
- Resubmittal of Amended Applications
- Appeals of Notices of Nonacceptance
- Recruitment of U.S. Workers
- Certifications Denied
- Appeals of Denials of Certifications
- Certifications Granted
- Violations, Penalties, and Sanctions
- Appeals of Employer Penalties

Addendum A:

Addresses and Phone Numbers of Employment and

Training Administration Regional Offices

Addendum B:

Blank Application Forms ETA-750 and ETA-790, with illustrative Attachments and Step-by-Step Instructions for Completing Forms

Section I: Introduction

This booklet is intended to provide information to agricultural employers, associations of employers, and Agents for such employers. If you are an agricultural employer who may need nonimmigrant alien workers on a temporary basis to tend or harvest your crops, or do other agricultural labor or services, you must comply with new regulations establishing certain requirements and procedures.

The information in this booklet provides only a broad overview of the process of applying for certification for the importation of temporary alien agricultural workers. The filing requirements and employer obligations are presented in general terms. The Department of Labor regulations at 20 CFR Part 655, Subpart B provides a comprehensive statement of such requirements and obligations.

The statutory basis for these employer requirements is the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA). IRCA is the most comprehensive reform of our immigration laws since 1952. The purpose of the requirements placed by the H-2A Regulations upon employers wishing to hire nonimmigrant aliens as temporary agricultural workers is to assure employers an adequate labor force on the one hand and to protect the jobs of U.S. workers on the other. A temporary labor certification will not be granted until it is shown that there are not sufficient U.S. workers available for the job, and the employment of aliens will not adversely affect U.S. workers. If a labor certification is granted, it is the employer's responsibility to arrange for the admission of aliens into the U.S. by filing a visa petition with the Immigration and Naturalization Service. Actual recruitment of foreign workers is solely the responsibility of the employer.

H-2A is one of the provisions of IRCA relating to agriculture. Information requests about other provisions relating to the Special Agricultural Workers provisions of the statute and employer sanctions should be directed to the Immigration and Naturalization Service.

The effective date of the interim final regulations upon which this booklet is based is June 1, 1987.

Section II: The Application Process

Who May Apply

The following general categories of individuals or organizations may file an application:

- An agricultural employer who anticipates a shortage of U.S. workers needed to perform agricultural labor or services of a temporary or seasonal nature may file an application requesting temporary alien agricultural labor certification. "Temporary or seasonal nature" means employment performed at certain seasons of the year, usually in relation to the production and/or harvesting of a crop, or for a limited time period of less than one year when an employer can show that the need for the alien worker(s) is truly temporary.
- The employer may be an individual proprietorship, a partnership or a corporation. An association of agricultural producers may file as a sole employer, a joint employer with its members, or as an agent of its members.
- An authorized agent, whether an individual (e.g., an attorney) or an entity (e.g., an association), may file an application on behalf of an employer. Associations may file master applications on behalf of their members.

Where to Apply

A signed application must be filed with the U.S. Department of Labor, Regional Administrator, (RA), Employment and Training Administration in the region of intended employment. (See Addendum A.) At the same time, a copy of the application must be filed with the local office of the State Employment Service in the area of intended employment.

What to Submit

The following forms, attachments, and statements must be submitted by the employer:

- Application for Alien Employment Certification (Form ETA 750), Part A, Offer of Employment;
- Agricultural and Food Processing Clearance Order (Form ETA 790). (This is the job offer portion of the application package. It must be comprehensive and precise because it, in effect, will constitute a contract between the employer and the worker, and can be the basis for enforcement.)
- Attachments (as appropriate) to supplement information requested on above forms;
- Statement of authorization of agent, if applicable; and
- Statement of association authorization and relationship, if applicable.

Conditions To Be Satisfied

Many of the benefits that must be included in a job offer and other conditions that must be satisfied will be dependent upon what prevailing practices exist in the same occupation, crop and area. Employers are advised that it is desirable to make an independent determination of such factors as prevailing wages and employer practices before filing an application.

The following specific conditions must be met by an employer who files an application for temporary alien labor certification pursuant to H-2A regulations:

- *Recruitment:* The employer must agree to engage in independent positive recruitment of U.S. workers. This means an active effort, including newspaper and radio advertising in areas of expected labor supply. Such recruitment must be at least equivalent to that conducted by non-H-2A agricultural employers in the same or similar crops and area to secure U.S. workers. This must be an effort independent of and in addition to the efforts of the State Employment Service. In establishing worker qualifications and/or job specifications, the employer must designate only those qualifications and specifications which are essential to carrying out the job and which are normally required by other employers who do not hire foreign workers. The employer must not reject or terminate U.S. workers for other than job-related reasons.

- *Wages:* The wage or rate of pay must be the same for U.S. workers and H-2A workers. The hourly rate must also be at least as high as the applicable Adverse Effect Wage Rate (AEWR), Federal or State minimum wage or the applicable prevailing hourly wage rate, whichever is higher. The Adverse Effect Wage Rate is established every year by the Department of Labor for every state except Alaska. Employers should consult with the State Employment Service or the Department of Labor Regional Office to determine what the rate is for their state.

If a worker will be paid on a piece rate basis and the piece rate does not result in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the hourly rate, then the worker's pay must be supplemented to the equivalent hourly level. The piece rate offered must be no less than what is prevailing in the area for the same crop and/or activity.

- *Housing:* The employer must provide free housing to all workers who are not reasonably able to return to their residences the same day. Such housing must be inspected and approved according to appropriate standards. Generally, housing provided must meet the full set of standards established by DOL's Occupational Safety and Health Administration (OSHA). Rental housing which meets local or State health and safety standards also may be provided.

- *Meals:* The employer must provide either three meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare their own meals. If meals are provided, then the employer may charge each worker a certain amount per day for the three meals.

- *Transportation:* The employer is responsible for the following different types of transportation of workers:

(1) After a worker has completed fifty percent of the work contract period, the employer must reimburse the worker for the cost of transportation and subsistence from the place of recruitment to the place of work if such costs were borne by the worker. (2) The employer must provide free transportation between the employer's housing and the worksite for any worker who is provided housing. (3) Upon completion of the work contract, the employer must pay reasonable costs of the worker's subsistence and return transportation to the place of recruitment. Special conditions apply when the worker will not be returning to the place of recruitment because of another job. If the employer advances transportation costs to foreign workers or provides transportation, the employer must advance such costs or provide transportation to U.S. workers as well.

- *Workers' Compensation Insurance:* The employer must provide Workers' Compensation Insurance where required by State law. Where not required by State law, the employer must provide equivalent insurance for all workers. Proof of insurance coverage must be provided to the RA before certification is granted.

- *Tools and Supplies:* The employer must furnish at no cost to the worker all tools and supplies necessary to carry out the work, unless it is common practice in the area and occupation for the worker to provide certain items.

- *Three-fourths Guarantee:* The employer must guarantee to offer each worker employment for at least three-fourths of the workdays in the work contract period and any extensions. If the employer affords less employment, then the employer must pay the amount which the worker would have earned had the worker been employed the guaranteed number of days.

- *Fifty- Percent Rule:* The employer must hire any qualified and eligible U.S. worker who applies for a job until fifty percent (50%) of the period of the work contract has elapsed.

- *Labor Dispute:* The employer must assure that the job opportunity for which H-2A certification is being requested is not vacant because the former occupant is on strike or is being locked out in the course of a labor dispute.

- *Certification Fee:* A fee will be charged to an employer granted temporary alien agricultural labor certification. The fee is \$100, plus \$10 for each job opportunity certified, up to a maximum fee of \$1000 for each certification granted.

- *Other Conditions:* The employer must keep accurate records with respect to a worker's earnings. The worker must be provided with a complete statement of hours worked and related earnings on each payday. The employer must pay the worker at least twice monthly or more frequently if it is the prevailing practice to do so. A copy of a work contract or the job order must be provided by the employer to each worker.

When to Apply

An employer should observe the following time considerations when applying for H-2A certification:

- A complete application must be filed with and received by the appropriate RA and local office of the State Employment Service at least sixty (60) calendar days before the first date on which workers are needed.
- If the initial application is acceptable or amended within required time frames and complies with the regulations, the RA will make a certification determination twenty (20) calendar days before the date on which the workers are needed. Delays in obtaining an acceptable application beyond the time permitted in regulations will delay the certification determination.
- Employers are encouraged to file before the minimum sixty (60) calendar-day requirement. This allows more time for review, discussion, and amendment, if necessary.
- Employers are encouraged to consult with the U.S. Department of Labor, Employment and Training Administration Regional Office and State Employment Service staff for guidance and assistance well before the sixty-calendar-day filing period.
- First-time employers of H-2A workers may be given special time considerations (until 1989)
- In emergency situations the RA may waive the time period specified, provided the RA has an opportunity to obtain sufficient labor market information on an expedited basis in order to make a determination of U.S. worker availability. None of the minimum conditions of employment (wages, housing, other benefits) are waived, however.

How to Apply

Applications may be filed using any of the methods below:

- Applications may be filed in person with the appropriate RA *and* local office of the State Employment Service.
- Applications may be mailed to the appropriate RA *and* local office of the State Employment Service by certified mail, return receipt requested.
- Applications may be delivered by guaranteed commercial delivery to the appropriate RA *and* local office of the State Employment Service.

Review of Applications

The RA will review an employer's application promptly. Normally, within seven (7) calendar days after receipt of an application, the RA will notify the employer in writing of the decision to accept or reject an employer's application. Copies of the notification will be sent to the local office of the State Employment Service and to the employer by means normally assuring next day delivery.

Applications Accepted For Consideration

If the application is accepted for consideration, the RA will notify the employer in writing. The RA's notice of acceptance:

- will inform the employer and the State agency of specific efforts expected of them regarding recruitment of U.S. workers;
- will require that the job order be placed into appropriate intrastate and interstate clearances; and
- may require the employer to engage in independent positive recruitment efforts within a multi-State region of traditional or expected labor supply if the RA determines there is a sufficient supply of labor to be recruited.

Applications Not Accepted For Consideration

If the application is not accepted for consideration, then the RA must notify the employer (copy to local office of State Employment Service) in writing within seven (7) calendar days after receipt of the application. The RA's notice of nonacceptance must state:

- why the employer's application is not acceptable for consideration;
- what changes are required for the RA to accept the application for consideration;
- that the employer has *five (5) calendar days* from the date of the RA's notice in which to resubmit the application with modifications requested by the RA to correct any deficiencies; and
- what procedures the employer may use to appeal the RA's nonacceptance.

Resubmittal of Amended Applications

An employer may choose to resubmit an application with modifications required by the RA in his/her notice of nonacceptance. In such instances, an employer should file the amended application within five calendar days of the RA's notice of nonacceptance. The amended application must be filed with the RA (with a copy to the local employment service office). Delays in doing so will result in delaying a certification determination.

Appeals of Notices of Nonacceptance

The RA will inform the employer about the system of appeals provided for in the regulations.

Recruitment of U.S. Workers

Upon receipt of an employer's application for temporary alien agricultural labor certification, the local employment service office must promptly prepare a local job order and begin recruiting U.S. workers in the area of intended employment.

Within seven (7) calendar days after receipt of an application, the local office of the State Employment Service must prepare an agricultural clearance order to permit the recruitment of U.S. workers by the employment service system on an intrastate and interstate basis.

After an application is accepted for consideration, the RA must provide direction to *both* the employer *and* the local employment service office.

After an employer's application is accepted for consideration, the RA may require the employer to independently engage in specific positive recruitment efforts within a multi-State region of traditional or expected labor supply if the RA determines there is a sufficient supply of labor to be recruited.

Certifications Denied

The RA must deny certifications for any of the following reasons:

- The application did not meet the required time frames (except in emergency situations) and there is not enough time to test the availability of U. S. workers.
- Enough able, willing, and qualified eligible U.S. workers are available to fill all the employer's job opportunities. (In the event such workers do not report when needed, there is a process for a later redetermination).
- The employer has not complied with the workers' compensation requirements.
- The employer has not satisfactorily complied with positive recruitment requirements.
- The employer, since the application was accepted for consideration, has adversely affected the wages, working conditions, or benefits of U.S. workers.
- After appropriate notice and opportunity for a hearing, the RA determines that the employer has substantially violated a material term or condition of a previous H-2A certification within the last two years.

If the RA denies certification, then the RA must notify the employer (with copy to the local office of the State Employment Service) by means calculated to assure next-day delivery. The notice of denial must state the reasons the certification was denied and offer the employer an opportunity for appeal.

Appeals of Denials of Certifications

The RA will inform the employer about the system of appeals provided for in the regulations.

Certifications Granted

If the RA determines that the employer has complied with the recruitment assurances, the adverse effect criteria, all time requirements and other appropriate requirements established by law and regulation, then the RA will grant the temporary alien agricultural labor certification for the number of job opportunities for which it has been determined there are not sufficient U.S. workers available. After certification has been granted, the employer must continue to recruit U.S. workers until the H-2A workers have departed for the place of work. In addition, the Employment Service System must continue to refer to the employer qualified and eligible U.S. workers who are seeking employment and who apply up to fifty percent of the contract period, and the employer must hire these U.S. workers.

Violations, Penalties, and Sanctions

A major thrust of IRCA, along with streamlining the system to make it more accessible for employers, is the enforcement of all major provisions related to protections for workers.

The Employment Standards Administration (ESA) of the U.S. Department of Labor has a primary role in investigating and enforcing the terms and conditions of employment. ESA will be responsible for enforcing the contractual obligations employers have toward employees, and may assess civil money penalties and recover unpaid wages. Administrative proceedings and/or injunctive actions through Federal courts may be instituted to compel compliance with an employer's contractual obligations to employees.

The Employment and Training Administration (ETA) will enforce other aspects of the laws and regulations. ETA will be responsible for administering sanctions relating to substantial violations of the regulations (denial of certification for up to three years) and less than substantial violations of the regulations (reductions of one-fourth of job opportunities certified).

Appeals of Employer Penalties

The RA will inform the employer about the system of appeals provided for in the regulations.

Addendum A

U.S. Department of Labor
Employment and Training Administration
Regional Office Addresses

Region - States Included

I Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont

Regional Office

Regional Administrator
U.S. Department of Labor, ETA
Room 1707
J. F. Kennedy Bldg.
Government Center
Boston, Massachusetts 02203
(617) 565-2258

II New Jersey, New York, Canal Zone, Puerto Rico and the Virgin Islands

Regional Administrator
U.S. Department of Labor, ETA
201 Varick St.
Room 755
New York, New York 10036
(212) 337-2139

III Delaware, Maryland, Pennsylvania, Virginia, W. Virginia and the District of Columbia

Regional Administrator
U.S. Department of Labor, ETA
3535 Market Street
P.O. Box 8796
Philadelphia, Pennsylvania 19101
(215) 596-6336

IV Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina and Tennessee

Regional Administrator
U.S. Department of Labor, ETA
Room 400
1371 Peachtree Street, N.E.
Atlanta, Georgia 30367
(404) 347-4411

V Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin

Regional Administrator
U.S. Department of Labor, ETA
230 So. Dearborn Street
6th Floor
Chicago, Illinois 60604
(312) 353-0313

VI Arkansas, Louisiana, N. Mexico, Oklahoma and Texas

Regional Administrator
U.S. Department of Labor, ETA
525 Griffin Street
Room 317
Dallas, Texas 75202
(214) 767-8263

- | | | |
|------|--|---|
| VII | Iowa, Kansas, Missouri and Nebraska | Regional Administrator U.S. Department of Labor, ETA Room 800, Federal Building 911 Walnut Street Kansas City, Missouri 64106 (816) 374-3796 |
| VIII | Colorado, Montana, N. Dakota, S. Dakota Utah and Wyoming | Regional Administrator U.S. Department of Labor, ETA 1961 Stout Street, Room 1676 Denver, Colorado 80294 (303) 844-4477 |
| IX | Arizona, California, Hawaii, Nevada, Trust Territories of the Pacific Islands, Guam and American Samoa | U.S. Department of Labor, ETA 71 Stevenson Street 8th Floor P.O. Box 3767 San Francisco, California 94119-3767 (415) 995-5482 |
| X | Alaska, Idaho, Oregon and Washington | Regional Administrator U.S. Department of Labor-ETA Suite 900 1111 Third Avenue Seattle, WA 98101 (206) 553-5297 |

Addendum B

This part of the booklet contains blank forms for your use. Included are two complete sets of forms. Each set consists of Form ETA-750, Form ETA-790, and appropriate attachments. Plus step-by-step instructions for completing the forms. The attachments to ETA 790 are not required forms. And are presented for illustrative purposes only.

Step-By-Step Instructions for Completing Form ETA-750

These instructions will help employers understand the information that is being requested. Please read the instructions carefully and follow them to minimize the chances of your application package being returned due to incomplete information. (*Note:* Complete only Part A, as Part B does not apply.)

- Item 1 — Enter “Unknown”.
- Item 2 — Enter “Unknown”.
- Item 3 — Enter “N/A” (not applicable).
- Item 4 — Enter full name of individual employer, partnership or corporation.
- Item 5 — Enter complete phone number.
- Item 6— Enter complete address.
- Item 7— Enter address of location where alien worker will work. Enter “same” if same as Item 6.
- Item 8— Enter description of employer’s agricultural business.
- Item 9— Enter appropriate job title which best describes work that is to be performed.
- Item 10 — Enter hours to be worked per week - show regular work hours and overtime hours separately, if any.
- Item 11 — Enter daily work schedule times.
- Item 12 — Enter basic rate of pay and overtime rate of pay, as appropriate.
- Item 13 — Enter short description and make reference to complete description, Form ETA-790, Item 11.
- Item 14 — Enter the minimum education, training, or experience necessary for worker to carry out the described duties.
- Item 15 — Enter description of any special requirements for the job, such as physical performance, operation of machinery or vehicles.
- Item 16 — Enter appropriate title.
- Item 17— Enter appropriate number.
- Item 18 — (a) Enter number of job openings; and (b) Enter date you expect to employ these workers.

(Note: Entries must be consistent with dates entered on Form ETA-790.)

- Item 19 — Complete as appropriate.
- Item 20— Enter “N/A.”
- Item 21 — Enter complete description of your positive recruitment plan to recruit U.S. workers. Positive recruitment is the independent, active participation of an employer in finding and interviewing U.S. workers for specific job openings. Your plan must describe: (1) any recruitment efforts, if any, made by the employer prior to application; (2) how the employer will make at least an equal level of effort as that made by non-H-2A agricultural employers to secure U.S. workers; and (3) how the employer will, if applicable, provide a labor contractor override no less than the prevailing override being provided by non-H-2A agricultural employers in the occupation and area of employment. This must be an effort independent of and in addition to the efforts of the State Employment Service. Explain the results of these activities to date.
- Item 22 — Does not apply.

- Item 23 — These certifications do not apply to H-2A application. Cross out item and enter “N/A”.
- Item 24 — Sign, date and print or type name and title. Complete Authorization of Agent of Employer, if the employer is using an “agent”.

U.S. DEPARTMENT OF LABOR
Employment and Training Administration

**APPLICATION
FOR
ALIEN EMPLOYMENT CERTIFICATION**

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THIS FORM
PRINT legibly in ink or use a typewriter. If you need more space to answer questions in this form, use a separate sheet. Identify each answer with the number of the corresponding question. SIGN AND DATE each sheet in original signature.
To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by \$10,000 fine or 5 years in the penitentiary, or both (18 U.S.C. 1001)

PART A. OFFER OF EMPLOYMENT

| | |
|--|------------------------------|
| 1. Name of Alien (Family name in capital letter, First, Middle, Maiden) | |
| 2. Present Address of Alien (Number, Street, City and Town, State ZIP code or Province, Country) | 3. Type of Visa (If in U.S.) |

The following information is submitted as an offer of employment.

| | |
|---|--------------|
| 4. Name of Employer (Full name of Organization) | 5. Telephone |
| 6. Address (Number, Street, City and Town, State ZIP code) | |
| 7. Address Where Alien Will Work (if different from item 6) | |

| 8. Nature of Employer's Business Activity | 9. Name of Job Title | 10. Total Hours Per Week | | 11. Work Schedule (Hourly) a.m. p.m. | 12. Rate of Pay | |
|---|----------------------|--------------------------|-------------|--|--------------------------|----------------------------|
| | | a. Basic | b. Overtime | | a. Basic \$ per _____ | b. Overtime \$ per hour |

13. Describe Fully the job to be Performed (Duties)

| | | | | | | | |
|---|--------------|-------------|--------------------|-----------------------------------|------------------------------|--|----------------------|
| 14. State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in item 13 above. | | | | 15. Other Special Requirements | | | |
| EDUCATION (Enter number of years) | Grade School | High School | College | College Degree Required (specify) | | | Major Field of Study |
| | | | | | | | |
| TRAINING | No. Yrs. | No. Mos. | Type of Training | | | | |
| EXPERIENCE | Job Offered | | Related Occupation | | Related Occupation (specify) | | |
| | Yrs. | Mos. | Yrs. | Mos. | | | |

| | |
|---|--|
| 16. Occupational Title of Person Who Will Be Alien's Immediate Supervisor | 17. Number of Employees Alien Will Supervise |
|---|--|

ENDORSEMENTS (Make no entry in section - for Government use only)

| Date Forms Received | |
|---------------------|-----------|
| L.O. | S.O. |
| R.O. | N.O. |
| Ind. Code | Occ. Code |
| Occ. Title | |

| | | | | | |
|---|---|--|--|---|------|
| 18. COMPLETE ITEMS ONLY IF JOB IS TEMPORARY | | | 19. IF JOB IS UNIONIZED (Complete) | | |
| a. No. of Openings To Be Filled By Aliens Under Job Offer | b. Exact Dates You Expect To Employ Alien | | a. Number of Local | b. Name of Local | |
| | From | To | | c. City and State | |
| 20. STATEMENT FOR LIVE-AT-WORK JOB OFFERS (Complete for Private Household ONLY) | | | | | |
| a. Description of Residence | | b. No. Persons residing at Place of Employment | | c. Will free board and private room not shared with anyone be provided? ("X" one) | |
| <input type="checkbox"/> ("X" one) <input type="checkbox"/> House <input type="checkbox"/> Apartment | Number of Rooms | Adults | BOYS | Children | Ages |
| | | | GIRLS | | |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | | | | | |
| 21. DESCRIBE EFFORTS TO RECRUIT U.S. WORKERS AND THE RESULTS. (Specify Sources of Recruitment by Name) | | | | | |
| | | | | | |
| 22. Applications require various types of documentation. Please read Part II of the instructions to assure that appropriate supporting documentation is included with your application. | | | | | |
| 23. EMPLOYER CERTIFICATIONS | | | | | |
| By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment. | | | | | |
| a. I have enough funds available to pay the wage or salary offered the alien. | | b. The wage offered equals or exceeds the prevailing wage and I guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work. | | c. The wage offered is not based on commissions, bonuses, or other incentives, unless I guarantee a wage paid on a weekly, bi-weekly, or monthly basis. | |
| d. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States. | | e. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship. | | f. The job opportunity is not: | |
| | | | | (1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage. | |
| | | | | (2) At issue in a labor dispute involving a work stoppage. | |
| | | | | g. The job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law. | |
| | | | | h. The job opportunity has been and is clearly open to any qualified U.S. worker. | |
| 24. DECLARATIONS | | | | | |
| DECLARATION OF EMPLOYER | | Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct. | | | |
| SIGNATURE | | | | DATE | |
| NAME (Type or Print) | | | TITLE | | |
| AUTHORIZATION OF AGENT OF EMPLOYER | | I HEREBY DESIGNATE the agent below to represent me for the purposes of labor certification and I TAKE FULL RESPONSIBILITY for accuracy of any representations made by my agent. | | | |
| SIGNATURE OF EMPLOYER | | | | DATE | |
| NAME OF AGENT (Type or Print) | | | ADDRESS OF AGENT (Number, Street, City, State, ZIP code) | | |

PART B. STATEMENT OF QUALIFICATIONS OF ALIEN

FOR ADVICE CONCERNING REQUIREMENTS FOR ALIEN EMPLOYMENT CERTIFICATION: If alien is in the U.S., contact nearest office of Immigration and Naturalization Service. If alien is outside U.S., contact nearest U.S. Consulate.
IMPORTANT: READ ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM.
 Print legibly in ink or use a typewriter. If you need more space to fully answer any questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. Sign and date each sheet.

| | | | | | | |
|---|---|-------------------------|------------|----------------------------------|---|------------------------------|
| 1. Name of Alien (Family name in capital letters) | | | | First name | Middle name | Maiden name |
| 2. Present Address (No., Street, City or Town, State or Province and ZIP code) | | | | | Country | 3. Type of Visa (If in U.S.) |
| 4. Alien's Birthdate (Month, Day, Year) | 5. Birthplace (City or Town, State or Province) | | | Country | 6. Present Nationality or Citizenship (Country) | |
| 7. Address in United States Where Alien Will Reside | | | | | | |
| 8. Name and Address of Prospective Employer if Alien has job offer in U.S. | | | | | 9. Occupation in which Alien is Seeking Work | |
| 10. "X" the appropriate box below and furnish the information required for the box marked | | | | | | |
| a. <input type="checkbox"/> Alien will apply for a visa abroad at the American Consulate in _____ | | City in Foreign Country | | Foreign Country | | |
| b. <input type="checkbox"/> Alien is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at _____ | | City | | State | | |
| 11. Names and Addresses of Schools, Colleges and Universities Attended (Include trade or vocational training facilities) | Field of Study | FROM | TO | Degrees or Certificates Received | | |
| | | Month Year | Month Year | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

SPECIAL QUALIFICATIONS AND SKILLS

| | |
|--|---------------|
| 12. Additional Qualifications and Skills Alien Possesses and Proficiency in the use of Tools, Machines or Equipment Which Would Help Establish if Alien Meets Requirements for Occupation in Item 9. | |
| 13. List Licenses (Professional, journeyman, etc.) | |
| 14. List Documents Attached Which are Submitted as Evidence that Alien Possesses the Education, Training, Experience, and Abilities Represented | |
| Endorsements | DATE REC. DOL |
| (Make no entry in this section - FOR Government Agency USE ONLY) | O.T. & C. |

(Items continued on next page)

15. WORK EXPERIENCE. List all jobs held during the last three (3) years. Also, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9.

a. NAME AND ADDRESS OF EMPLOYER

| | | | |
|--|---|--|-----------------------|
| NAME OF JOB | DATE STARTED Month Year | DATE LEFT Month Year | KIND OF BUSINESS |
| DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES OR EQUIPMENT | | | NO. OF HOURS PER WEEK |
| | | | |
| | | | |

b. NAME AND ADDRESS OF EMPLOYER

| | | | |
|--|---|--|-----------------------|
| NAME OF JOB | DATE STARTED Month Year | DATE LEFT Month Year | KIND OF BUSINESS |
| DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES OR EQUIPMENT | | | NO. OF HOURS PER WEEK |
| | | | |
| | | | |

c. NAME AND ADDRESS OF EMPLOYER

| | | | |
|--|---|--|-----------------------|
| NAME OF JOB | DATE STARTED Month Year | DATE LEFT Month Year | KIND OF BUSINESS |
| DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES OR EQUIPMENT | | | NO. OF HOURS PER WEEK |
| | | | |
| | | | |

16. DECLARATIONS

| | |
|---------------------------------------|---|
| DECLARATION OF ALIEN | ➤ ➤ Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct. |
| SIGNATURE OF ALIEN | DATE |
| AUTHORIZATION OF AGENT OF ALIEN | ➤ I hereby designate the agent below to represent me for the purposes of labor certification and I take full responsibility for accuracy of any representations made by my agent. |
| SIGNATURE OF ALIEN | DATE |
| NAME OF AGENT (Type or print) | ADDRESS OF AGENT (No., Street, City, State, ZIP code) |

Step-By-Step Instructions for Completing Form ETA-790

These instructions will help employers understand the information that is being requested. Please read the instructions carefully and follow them to minimize the chances of your application package being returned due to incomplete information.

- Item 1 — To be completed by appropriate office of State Employment Service.
- Item 2 — To be completed by appropriate office of State Employment Service.
- Item 3 — To be completed by appropriate office of State Employment Service.
- Item 4 — Enter full name of individual employer, partnership, or corporation; and the complete address and complete phone number.
- Item 5 — “From”: Enter date when work to be performed by these workers is scheduled to begin; and “To”: Enter date when work to be performed by those workers is expected to be finished.
- Item 6 — To be completed by appropriate office of State Employment Service.
- Item 7 — If applicable, enter information pertinent to licensed contractor.
- Item 8 — Enter total number of workers that you are requesting as well as the number of individual and! Or family type workers. Also, state in body of job order *total* number of workers to be employed in this activity or service for the period of time involved.
- Item 9 — Enter appropriate crop and appropriate wage rate information. In no event may rate be less than the applicable Adverse Effect Wage Rate (AEWR), the FLSA or State minimum, or the applicable prevailing hourly wage rate, whichever is higher. Piece rates may not be less than those prevailing in the area and occupation. Include an attachment explaining your handling of this item.
- Item 10 — Enter normal hours worker is expected to work each day of the week. Enter total hours per week. Describe any special work schedule situations in an Attachment.
- Item 11 — Describe the duties (work tasks) which make up the job, in step-by-step detail, as appropriate. Avoid technical terms when possible, or define them where usage is necessary. Describe use of any equipment necessary to carry out tasks. Explain any worker performance standards that will apply. Describe any training provided. Describe any experience that is required. Describe any licenses or permits that are required. Describe what level of supervision will be provided. Explain the provision of necessary tools and equipment.
- Item 12 — Provide the location of and directions to your work site. Use commonly understood street or highway numbers and accurate distances.
- Item 13 — Using an attachment, describe how the employer intends to provide either 3 meals a day to each worker or furnish free and convenient cooking and kitchen facilities so that workers can prepare their own meals. Where the employer furnishes the meals, state the charge (if any) to the worker for such meals. The charge for 3 meals shall not be more than \$5.26* per day unless the RA has approved a higher charge. Where the employer provides facilities for cooking, explain if the workers will have access to stores where they can purchase groceries.
- Item 14 — Use an attachment to describe how the employer intends to provide free housing to workers who are not reasonably able to return to their residences the same day. Describe the housing and state how the housing will meet applicable housing standards. Identify by specific description the location of this housing.
- Item 15 — To be completed by employer or appropriate office of State Employment Service.
- Item 16— Indicate by checking the applicable box whether or not employer is willing to accept collect calls from job applicants and/or Employment Service offices.

- Item 17 — Using an attachment, describe how the employer intends to reimburse transportation costs or advance or provide for the cost of transportation and subsistence, when such is the prevailing practice in the area.
- Item 18 — To be completed by State Employment Service.
- Item 19 — To be completed by appropriate office of State Employment Service.
- Item 20— To be signed by the employer or other authorized person. Type or print full name and title.

*This amount is adjusted annually by the Department of Labor. Employers should check with the ETA Regional Office to determine what the current allowable charge is.

Agricultural and Food Processing Clearance Order

U.S. Department of Labor Employment and Training Administration



READ CAREFULLY: In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the JS constitute a contractual job offer to which the ETA or a State agency is in any way a party.

OMB Approval No. 1205-0134

| | |
|--------------------------------|---------------------|
| 1. Industry Code | 2. Job Order Number |
| 3. Occupational Title and code | |

4. Employer's Name and Address (Number, Street, City, State, Zip Code, and Telephone Number)

5. Anticipated Period of Employment

| | |
|-------------------------------|---------------------------|
| From: | To: |
| 6. Clearance Order Issue Date | Job Order Expiration Date |

7. Preferred Crew Leader/ Worker's Name and Address

| | | | |
|------------------------|--------------------|--------------------------|--------------------------|
| Social Security Number | Leader's Functions | Yes | No |
| Telephone Number | Supervises | <input type="checkbox"/> | <input type="checkbox"/> |
| | Transports | <input type="checkbox"/> | <input type="checkbox"/> |
| | Pays | <input type="checkbox"/> | <input type="checkbox"/> |
| | Assumes OASI | <input type="checkbox"/> | <input type="checkbox"/> |

8. No. & Type of Workers Requested

Total Number _____

No. Individual _____

No. Family _____

9. Wage Rates, Special Pay Information and Deductions

| Crop Activity | Flat Rate (i.e., hr. wk.) | Piece Rate | Unit | Est. Hourly Rate Equiv. | C/L Wage Rate |
|---------------|---------------------------|------------|-------|-------------------------|---------------|
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |

(See attachment no. _____)

10. Anticipated Hrs. of Work

Per Week _____

| | |
|----------------------|----------------------|
| Normal Hours Per Day | Sun _____ Thu _____ |
| | Mon _____ Fri _____ |
| | Tues _____ Sat _____ |
| | Wed _____ |

11. Job Specifications (If additional space is needed, please use separate sheet of paper or reverse of form)

See attachment no. _____

12. Location and Direction to Work Site

(See attach. no. _____)

13. Board Arrangements

(See attach. no. _____)

14. Location and Description of Housing

Employer assures the availability of no cost or public housing which meets the full set of applicable standards. (See attach. no. _____)

| Number and Capacity of Housing Units | | | | | |
|--------------------------------------|------------|--------------|------------|--------------|------------|
| Barracks | | Family Units | | Single Rooms | |
| No. | Total Cap. | No. | Total Cap. | No. | Total Cap. |
| _____ | _____ | _____ | _____ | _____ | _____ |
| Authorized Capacity _____ | | | | | |

15. Referral Instructions

(See attach. no. _____)

16. Collect Calls Accepted

| | | |
|-------------------------|--------------------------|--------------------------|
| | Yes | No |
| By Employer | <input type="checkbox"/> | <input type="checkbox"/> |
| By Order Holding Office | <input type="checkbox"/> | <input type="checkbox"/> |

17. Transportation Arrangements

(See attach. no. _____)

18. Distribution of Clearance Order

19. Address of Order Holding Office (include Telephone Number)

20. **Employer's Certification:** This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.

Signature _____

Name of Agency Representative (Include Telephone Number)

Title _____

Form ETA-790 Sample Attachments
For Illustrative Purposes Only

Job Order Number _____

Attachment 1 (For Illustrative Purposes Only)

Item 9— Wage Rates, Special Pay Information, and Deductions

(a) The Adverse Effect Wage Rate of \$_____ or a higher Prevailing Wage Rate if applicable, is guaranteed as a minimum. If the worker's piece rate earnings for a pay period result in average hourly earnings of less than the guaranteed rate, the worker will be provided make-up pay to the guaranteed minimum rate.

(b) Employer will make the following deductions:

FICA State taxes Advances Meals Other

(c) Employer will _____ will not _____ pay the worker a bonus of \$ _____ per _____, based on Quality Picking _____ End of Season _____ Other _____

Anticipated date by which payments will be made: _____

(d) Employer guarantees to offer employment for a minimum of $\frac{3}{4}$ of the workdays of the total specified period during which the work contract and all extensions thereof are in effect, beginning with the first workday after worker's arrival at the place of employment and ending on the expiration date specified in the work contract or extensions thereof. In Act of God terminations, the $\frac{3}{4}$ guarantee period ends on the date of termination. Worker is not required to work more than 8 hours per day except when otherwise Stated in the job order or on the worker's Sabbath or Federal holidays to meet the guarantee period.

(e) Payroll periods will be: Weekly Twice Monthly

(f) Employer will provide worker referred through the interstate clearance system hours of work for the week beginning with the anticipated date of need, *unless* employer has amended the date of need by notifying the local office no later than 10 days before the date of need. If employer fails to notify the order-holding office, then employer shall pay an eligible worker referred through the clearance system \$_____ for the first week starting with the originally anticipated date of need. Employer will _____ will not require worker to perform alternative work if the guarantee cited in this section is invoked. The alternative work and pay are:

If worker referred fails to notify the order-holding office of continued interest in the job at least 5 days before date of need, worker will be disqualified from the above-mentioned assurance.

Item 10— Anticipated Hours of Work

_____ hours per day is normal. The worker may be requested but not required to work _____ hours per day and/or the Sabbath depending upon the conditions in the orchards, weather, and maturity of fruit.

Item 13— Board Arrangements (Check applicable blanks).

Employer will provide 3 meals per day and will deduct \$ _____ per day. Employer will furnish free and convenient cooking and kitchen facilities so that workers may prepare their own meals.

Employer will provide (on a voluntary basis) transportation to assure workers access to stores where they can purchase groceries, if the employer is providing cooking and kitchen facilities.

Item 14— Location and Description of Housing

Location:

Description: Housing will be clean and in compliance with OSHA Housing Standards at 29 CFR

1910.142 when occupied_ Workers will be responsible for maintaining housing in a neat, clean manner.

Attachment 2 (For Illustrative Purposes Only)

Reasonable repair cost of damage, other than that caused by normal wear and tear, will be deducted from the earnings of workers found to have been responsible for damage to housing or furnishings.

Housing and utilities are provided at no cost to workers who are unable to return to their place of residence the same day.

Item 17 — Transportation

After worker has completed 50% of work contract period, employer shall reimburse worker for cost of transportation and subsistence from place of recruitment to place of work. Upon completion of the work contract, employer will pay reasonable costs of return transportation and subsistence to the place of recruitment, except when the worker will not be returning to the place of recruitment, due to subsequent employment with another employer who agrees to pay such costs, in which case this employer only pays for the transportation to the next job. The amount of the transportation payment will be equal to the most economical and reasonable similar common carrier transportation charges for the distances involved.

Other Conditions of Employment

Termination: Employer may terminate the worker with notification to the Employment Service local office if the worker: (a) refuses without justified cause to perform work for which the worker was recruited and hired; (b) commits serious acts of misconduct; or (c) fails, after completing any training or break-in period, to reach picking standards or exceeds percent bruising of apples.

In the event of termination for medical reasons occurring after arrival on the job, or occurring as a result of employment, or in the event of termination resulting from an Act of God, the employer will provide or pay reasonable costs of return transportation and subsistence to the place of recruitment and reimburse worker for reasonable costs of transportation and subsistence incurred by the worker to get to the place of employment.

Training: Employer will provide _____ days of training and allow _____ of work for worker to reach picking standards.

Production Standards: After completion of training or break-in period, employer will expect worker to pick a minimum of _____ bushels or _____ boxes of apples per hour _____ Day.

Injuries: Worker will be covered by Workers Compensation Insurance or equivalent employer provided insurance for injuries arising out of and in the course of employment. Employer's proof of insurance coverage will be provided to the Regional Administrator before certification is granted.

Employer Obligation if Employment Extended: No extension of employment beyond the period of employment specified in the job order shall relieve the employer from paying the wages already earned, or, if specified in the job order as a term of employment, providing return transportation or paying return transportation expenses to the worker.

Employer Notification of Changes in Employment Terms and Conditions: Employer will expeditiously notify the order-holding local office or State agency by telephone immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment, or other factors have changed the terms and conditions of employment.

Outreach Workers: Outreach workers shall have reasonable access to the worker in the conduct of outreach activities pursuant to 20 CFR 653.107 and 20 CFR 653.50 1 (xvi).

Work Agreement: A copy of the contract or Job Clearance Order will be provided to the worker by the employer no later than on the day the work commences.

Wage Statements: Employer will furnish to the worker on or before each pay day written statements showing the hours actually worked by the worker and the worker's total earnings for the pay period. Such statements will comply with DOL requirements.

Other: Employer agrees to abide by the regulations at 20 CFR 655.103, Assurances, and 20 CFR 653.501.